IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

W.A.No.2948 of 2003
and
W.A.M.P.No.4657 of 2003

1. C.C.Eliamma
2. C.C.Kurian .. Appellants

-vs-

1.State of Tamil Nadu,
rep. By the Secretary,
Environment and Forest
Department,
Fort St.George,
Chennai 9.

2.The Forest Settlement Officer-II,
Gudalur, The Nilgiris.

3.The District Forest Officer,
Gudalur, The Nilgiris. .. Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 28.01.2003 made in W.P.No.4755 of 2001. Filed under Article 226 of the Constitution of India to issue a writ in the nature of writ of certiorarified mandamus or any other appropriate writ, direction or order, calling for the records relating to the order bearing No.20772/F.R. 111/95-2 Environment & Forest Department, dated 3.8.1995 on the file of the first respondent r/w the communication bearing Na.Ka.Aa.No.641/80 dated 5.1.2001 on the file of the Second respondent and to quash the same in so far as they are relating to the "L" Shaped portion, consisting of the plantation and the house bearing D.No.2/360 on the southern side of the land measuring 100 cents and comprised in R.S.No.106/1 (S.F. No.17/19) in Munnadu Village, Pandalur taluk, The Nilgiris District R.S.no.106/1 and consequently to direct the respondents to issue notice to the petitioners U/s. 6 (d) of the Tamil Nadu Forest Act, Conduct enquiry, consider their claims over the said portion and to dispose of the same in accordance with the procedures provided under the said Act.

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For Appellants : Mr.T.P.Manoharan

For Respondents : Mr.Titus Jesudoss,Spl.G.P.(Forest)

J U D G M E N T

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order of the learned single Judge dated 28.01.2003 made in W.P.No.4755 of 2001, in and by which the learned Judge, after finding no merits in the claim of the petitioners, dismissed their writ petition.

2. Heard the learned counsel appearing for the appellants as well as the learned Special Government Pleader for the respondents.

3. In view of the order to be passed hereunder, we are of the view that it is unnecessary to refer to the factual matrix as stated by the petitioners/appellants.

4. It is the specific case of the appellants that they were not given notice under Section 6(d) of the Tamil Nadu Forest Act, 1882. It is also brought to our notice that though the appellants made objections with regard to the proposal of the Forest Department covering certain area as a reserve forest, the proceedings of the Forest Settlement Officer - II, Gudalur in Rc.A.No.310/90 dated 04.12.1980 shows that their objections were not considered, since according to the said authority, the same were not related to the proposal on hand and accordingly those objections were rejected. No doubt, the appellants have not preferred an appeal against the said order as mentioned in paragraph No.7 of the said proceedings. However, it is brought to our notice that after the Notification, the State Government has power to declare the forest as no longer reserve forest. Section 24 of the Tamil Nadu Forest Act, 1882 reads as under:

> "24. Power to declare forest no longer reserve: The Government may by notification in the [Official Gazette] direct that from date to be fixed by such notification any forest or any portion thereof reserved Under this Act shall cease to be reserved.
>
> From the date so fixed such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation."

5. In view of the above mentioned provision and considering the grievance of the appellants, we are of the view that ends of justice would be met by permitting the appellants to make a

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representation/petition to the Government - first respondent herein, highlighting their grievance/claim within a period of four weeks from the date of receipt of a copy of this order. If any such representation/petition is made, the first respondent is directed to consider and pass appropriate orders in accordance with Section 24 of the said Act within a period of three months thereafter, after affording opportunity to the appellants. In view of the fact that the appellants had the benefit of the interim order all along and of the assertion that they are residing in the land in question, their possession shall not be disturbed till final decision being taken by the Government as directed above. The writ appeal is ordered accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

gms

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary,
State of Tamil Nadu,
Environment and Forest
Department,
Fort St.George,
Chennai 9.

2.The Forest Settlement Officer-II,
Gudalur, The Nilgiris.

3.The District Forest Officer,
Gudalur, The Nilgiris.

+ 1 cc to Mr. T. P. Manoharan, Advocate SR no. 15006

+ 1 cc to Spl Government Pleader (Forests) High Court, SR No. 15118

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